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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,404	10/29/2003	Christopher J. Willems	325-010	7261

33354 7590 12/28/2007  
ETHERTON LAW GROUP, LLC  
5555 E. VAN BUREN STREET, SUITE 100  
PHOENIX, AZ 85008

EXAMINER
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WINNER, TONY H

ART UNIT	PAPER NUMBER
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3611

MAIL DATE	DELIVERY MODE
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12/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/697,404	Applicant(s) WILLEMS ET AL.	
	Examiner Tony H. Winner	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/18/07.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 8-16, and 18-19 is/are rejected.
- 7) ☒ Claim(s) 3, 7 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application.                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Acknowledgment***

1. Receipt of the amendment filed 11/5/07 has been acknowledged and entered. The office finds applicant arguments persuasive, therefore, withdrawing all rejection to previous office action dated 3/27/07. Claims 22-25 have been canceled. The indicated allowability of claims 2, 8, 12, and 18 are withdrawn in view of the newly discovered reference to Evling (USPN. 5,927,739).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8, 9, 12-14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Evling (USPN. 5,927,739).

Evling discloses a wheelchair pushrim system (figures 1 and 4) comprising:

- a. a hollow and smooth pushrim (abstract 22 and 24);
- b. a wheel (92) connected to the pushrim;
- c. a connector (94) connecting the pushrim to the wheel; and
- c. an elastic insert (100 and col 5 lines 59) compressibly fit between the pushrim and the

wheel;

d. wherein the elastic insert can also be made out of rubber or neoprene, or silicon (col 5 lines 59).

With regard to claims 8 and 18, the Examiner takes position that if the insert is made of neoprene or the combination of , than it surface would have a gripping texture.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evling.

With regard to claims 5-6, Evling discloses the claimed invention but lacks the teaching that the pushrim has an elongated circular or oval cross section. It would have been an obvious matter of design choice to make the pushrim elongated circular or oval to facilitate easy gripping of the hand rim by the wheelchair user and since it has been held that the selection of shapes and sizes of an invention would involve only routine skill in the art.

With regard to claims 10-11, Evling discloses the claimed invention but lacks the teaching that the pushrim is connected to the wheel by means of tab

mount or rivet-nut mount. However, Evling discloses the pushrim may be attached to the wheel by means of bolts, bushings, bars, clamps, couplers welding, pins, or other fastener. Therefore, it would have been an obvious matter of design choice to attach the pushrim to the wheelchair by means of tab-mount or rivet-nut mount as required by a particular application.

### ***Response to Arguments***

4. In the amendment filed 11/5/07, Applicant believes the Examiner has not addressed the issue of nonanalogous art to DeSouza. Contrary to this assertion, page 5 of the office action (dated 3/28/07) has provided Applicant with the Office's position and how the reference (DeSouza) is being used or considered in a 103 rejection.

### ***Allowable Subject Matter***

5. Claims 3, 7, 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 20-21 are allowed.


### ***Conclusion***

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Anthony H. Winner whose telephone number is (571) 272-6654. The examiner can normally be reached on Monday-Friday

from 9:30 am to 6:30 pm. The fax phone number for the organization where this application or proceeding is (571) 273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information-Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6584.



**TONY WINNER**  
**PATENT EXAMINER**

December 21, 2007